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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, C.G.

CRIMINAL APPEAL NO. 102 /2006

(Criminal Appeal Under section 374 (2) of Criminal Procedure Code)

APPELLANT
IN JAIL

Ambelal Nai, aged about 19 years,
S/o Bhola Nai, R/o village Haripur
Police chowki Bhatgaon, police station
Pratappur, Distt. Surguja (C.G.)

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VERSUS

RESPONDENT

State of Chhattisgarh through the
Police chowki Bhatgaon, police station
Pratappur, Distt. Surguja, C.G.

**CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL
PROCEDURE CODE**

HIGH COURT OF CHHATTISGARH AT BILASPURSingle Bench: Hon'ble Shri Justice Dilip Raosaheb DeshmukhCriminal Revision No.102/2006Ambelal Nai

Vs.

State of Chhattisgarh

Present:

Shri Vishnu Koshta, Advocate for the Appellant.

Shri Sumesh Bajaj, Govt. Advocate for the State

JUDGMENT

(Delivered on 23.03.2006)

This appeal is directed against the judgment dated 23.01.2006 delivered by the learned 2nd Additional Sessions Judge, Surajpur, District Surguja in Sessions Case No.64/2005 whereby the appellant was convicted under Section 450, 376 (1) and 506-B I.P.C. and was sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.1,000/-, under Section 450 I.P.C., to undergo rigorous imprisonment for seven years and a fine of Rs.1000/-, under Section 376(1) I.P.C. and to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- under Section 506-B I.P.C. It was also ordered that in default of payment of fine, the appellant shall undergo additional R.I. for one month each under Section 450 & 376(1) I.P.C. and R.I. for 15 days under Section 506-B I.P.C. respectively. The sentences were ordered to run concurrently.

2. Briefly stated the prosecution story is that on 10.12.2004 in village Haripur the prosecutrix was alone in the house with her minor children. Subhag Ram P.W.4 husband of the prosecutrix had gone to village Bardoli. At about 11.00 P.M. while the prosecutrix was sleeping,

there was a knock at the door. On opening the door the appellant forcibly entered the house and committed rape on the prosecutrix after threatening her at the point of a knife. After committing rape, the appellant went away. The prosecutrix narrated the incident immediately to Kunti Bai P.W.3, grand-mother of the appellant in detail and also to Tara Bai P.W.2, Gita Prasad P.W.5, the village *Gontiya*. Husband of the prosecutrix returned to village Haripur on 11.12.2004. F.I.R. Ex.P.8 was lodged at 3.10 P.M. on 12.12.2004 at Police Station Pratappur situated at a distance of 40 kilometers. The prosecutrix was sent for medical examination. Dr. Mrs. Rose Bula Tirkey P.W.9 examined the prosecutrix on 13.12.2004 and found no marks of injury anywhere on the person of the prosecutrix. Vagina admitted two fingers easily. The prosecutrix being a married lady, it was opined that she was accustomed to sexual intercourse and no definite opinion could be given regarding recent intercourse. Vaginal slides were prepared, sealed and sent to the concerned Police Station. One old used underwear was seized from the appellant on 21.12.2004 vide Ex.P.4. Sealed vaginal slides were also seized from the Constable vide Ex.P.5. These articles were sent for chemical examination to the Forensic Science Laboratory, Raipur for confirmation of semen and human spermatozoa. The report of the F.S.L. was tendered as evidence under Section 293 Cr.P.C. and was marked as Ex.P.16. As per report, presence of semen and human spermatozoa was confirmed on the vaginal slides of the prosecutrix, though not on the underwear of the appellant. After completion of investigation, the appellant was prosecuted under Section 450, 376(1) and 506-B of the I.P.C. Charges were framed accordingly by the learned Additional Sessions Judge. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 11 witnesses. Relying upon the evidence led by the prosecution, the

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learned trial Judge convicted and sentenced the appellant as aforesaid in paragraph 1.

3. Shri Vishnu Koshta, learned counsel for the appellant has assailed the conviction of the appellant for the offences aforesaid on the ground that the delay in lodging the F.I.R. on 12.12.2004 was not explained satisfactorily by the prosecutrix. It was further contended that the absence of any injury on the person of the prosecutrix rendered her testimony unworthy of credit. The innocence of the appellant was further fortified by the report of the F.S.L. Ex.P.16 wherein the presence of semen or human spermatozoa on his underwear was not confirmed. The testimony of Subhag Ram P.W.4 in paragraph 8 was referred while arguing that the prosecutrix had only informed him that the appellant had committed "*Dangadas*" with her. Lastly, referring to paragraph 9 of the testimony of Subhag Ram, it was pointed out that the appellant had been falsely implicated due to a previous enmity since the father of the appellant proclaimed that the prosecutrix used witchcraft. The testimony of Gita Prasad P.W.5, the village *Gontiya* was also referred to substantiate the innocence of the appellant.

4. On the other hand, Shri Sumesh Bajaj, learned Government Advocate argued in support of the impugned judgment and contended that the absence of injuries on the person of the prosecutrix by itself could not be a ground for disbelieving her testimony which had stood the test of cross-examination and inspired confidence. He contended that the testimony of Gita Prasad P.W.5, the village *Gontiya* read with paragraph 9 of the testimony of Kunti Bai P.W.3 clearly revealed that Gita Prasad, the village *Gontiya* was taking sides with the appellant and was trying to hush up the matter. It was strenuously argued that Kunti Bai P.W.3 is the grand-mother of the appellant who has categorically narrated that the prosecutrix had immediately after the occurrence come to her crying and told her that the appellant had

forcibly entered her house and committed rape on her. So far as the report of F.S.L. Ex.P.16 is concerned, learned Government Advocate argued that the prosecutrix being a married woman and her medical examination having been conducted after about two days, the said report was of no avail either for the prosecution or the defence.

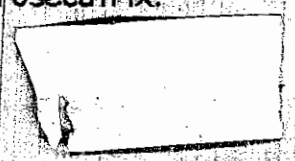
5. Having heard rival contentions, I have perused the record. The prosecutrix, a married woman aged 35 years, has deposed that on the night of occurrence while she was sleeping inside the house with her minor children, the appellant shouted and asked her to open the door. On opening the door the appellant asked for water and suddenly grabbed her, threw her on the ground and holding a knife in his hand and threatening to kill if she shouted, committed rape on her. I have minutely gone through the testimony of the prosecutrix and find that she has stood the test of cross-examination. So far as her testimony in paragraphs 14 & 15 and 17 is concerned, although it emerges that she did not shout, yet it is explained by the fact that the appellant was holding a knife and had after entering the house threatened her not to shout.

6. The testimony of the prosecutrix is fully corroborated by Kunti Bai P.W.3. This witness is the grand-mother of the appellant. She has categorically narrated that the prosecutrix came to house at night crying and told her that the appellant had forcibly entered the house and threatening her at the point of knife committed rape on her. There is absolutely nothing to show that this witness would falsely implicate her grand-son and take sides with the prosecutrix. Tara Bai P.W.2 is another witness who supports the testimony of the prosecutrix by deposing that immediately after the occurrence the prosecutrix had narrated that the appellant had after forcibly entering her house committed rape on her. Subhag Ram P.W. 4 has also asserted that on his return the prosecutrix had told her that the appellant had after pushing her on the ground outraged her modesty.

So far as the testimony of Gita Prasad P.W.5, the village *Gontiya* is concerned, it clearly appears that he was taking sides with the appellant right from the very beginning and trying to hush up the matter. Kunti Bai P.W.3 has also stated that the prosecutrix had while informing her about the incident at night told her that to hide her shame she had not informed the *Gontiya* about the incident of rape. This wholly explains the testimony of Gita Prasad P.W.5 that the prosecutrix informed him that the appellant had gone to her house at night and was threatening her to open the door.

7. Having thus considered the testimony of the prosecutrix P.W.1, Tara Bai P.W.2, Subhag Ram P.W.4 and Kunti Bai P.W.3, I am of the considered opinion that it inspires confidence and is worthy of placing reliance on. So far as the delay in lodging the F.I.R. is concerned, the F.I.R. Ex.P.8 was lodged on 13.12.2004 at about 3.10 P.M. at P.S. Pratappur which was at a distance of about 40 kilometers. Subhag Ram P.W.4 has stated that he had gone to the neighbouring village and had returned on the next day after the occurrence. Considering the conduct of the prosecutrix in immediately informing about the occurrence to the grand-mother of the appellant Kunti Bai P.W.3, Tara Bai P.W.2 and Gita Prasad P.W.5, the village *Gontiya* and also to her husband on his return to the village on the next day and also the fact that P.S.Pratappur was situated at a distance of 40 kilometers from the place of occurrence, the delay in lodging the F.I.R. is satisfactorily explained.

8. The argument that the testimony of the prosecutrix is liable to be disbelieved since the medical evidence of Dr. Mrs. Rose Bula Tirkey did not corroborate her is required to be stated only to be rejected. The prosecutrix is a married woman having children. The appellant had committed rape on her at the point of a knife. Therefore, the absence of any external injuries on the person of the prosecutrix cannot be a ground for disbelieving the testimony of the prosecutrix.



9. Paragraph 9 of the testimony of Subhag Ram P.W.4 shows that father of the appellant had alleged that the prosecutrix was indulging in witchcraft and on this count there was a quarrel between Subhag Ram P.W.4 and Bhola, father of the appellant. However, animosity is a double edged weapon and merely on this ground the wholly reliable testimony of the prosecutrix which is fully corroborated by Tara Bai P.W.2 and Kunti Bai P.W.3 cannot be brushed aside as unreliable and unworthy of credit.

10. The argument of the learned counsel for the appellant that Subhag Ram P.W.4 had admitted in cross-examination that his wife had informed only about "Dangadasi" has been considered by me. There is absolutely nothing on record to explain the word "Dangadasi". No further clarification was sought by the defence from this witness on this point. In view of the clear assertion by Subhag Ram P.W.4 in paragraph 3 that his wife, the prosecutrix, had informed him that the appellant had outraged her modesty after pushing her on the ground, the testimony in paragraph 8 does not benefit the appellant in any manner.

11. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the conviction of the appellant under Section 450, 376 (1) and 506-B I.P.C. and the sentences awarded thereunder by the learned trial Judge are well founded and calls for no interference.

12. In the result, this appeal being devoid of merit is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge